In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.23810-M of 2007

.....

Date of decision:3.5.2007

Gurnam Singh Mann

.....Petitioner

v.

State of Punjab and another

.....Respondents

....

Present: Mr. G.S. Sandhawalia, Advocate for the petitioners.

Mr. I.P.S. Sidhu, Senior Deputy Advocate General, Punjab for the respondent-State.

None for respondent No.2.

.....

S.S. Saron, J. (Oral)

As per office report respondent No.2 has been served, however, no one has appeared on his behalf.

This petition under Section 482 Cr.P.C. has been filed for quashing the conditions as imposed by the learned Sub Divisional Judicial Magistrate, Nawanshahr vide order dated 3.4.2007 (Annexure-P.12) whereby while granting permission to the petitioner to go abroad he has been directed to furnish bank guarantee in the sum of Rs. 10 Lacs instead of surety in the like amount.

The petitioner is facing trial in case FIR No.115 dated 11.5.2002 (Annexure-P.2) registered at Police Station Banga, Tehsil and District Nawanshahr for the offences under Sections 447, 506 and 34 IPC. The petitioner is non-resident Indian. He has filed Criminal Misc.

No.12068-M of 2007 for quashing the aforesaid FIR and all subsequent proceedings including the order dated 10.2.2003 passed by the learned Judicial Magistrate Ist Class, Nawanshahr whereby he has been declared as proclaimed offender. The petitioner filed Criminal Misc No.16092 of 2007 in the pending Criminal Misc. No.12068-M of 2007 seeking permission to go abroad during the pendency of the case before the trial Court. This Court vide order dated 19.3.2007 (Annexure-P.10) observed that since the petitioner has already appeared before the trial Court and has been released on bail in pursuance of order dated 8.12.2006 passed by this Court in Criminal Misc. No.77147-M of 2006, therefore, he is permitted to file said application for permission to go abroad before the trial Court. The petitioner accordingly filed an application (Annexure-P.11) seeking exemption from personal appearance and for permission to visit Canada/ leave India. The learned Sub Division Judicial Magistrate, Nawanshahr vide order dated 3.4.2007 (Annexure-P.12) inter alia imposed the condition that the petitioner shall furnish bank guarantee in the sum of Rs.10 Lacs in the name of Court from the bank and in case of his failure to return within the stipulated period, the amount shall stand forfeited without any further notice to the petitioner.

Learned counsel for the petitioner submits that instead of furnishing bank guarantee for a sum of Rs.10 Lacs the order of the Sub Divisional Judicial Magistrate, Nawanshahr dated 3.4.2007 (Annexure-P.12) is liable to be modified for furnishing guarantee or surety other than bank guarantee for Rs.10 Lacs.

Learned counsel for the State submits that keeping in view the

fact that the petitioner was declared proclaimed offender the conditions as imposed by the learned Sub Divisional Judicial Magistrate, Nawanshahr are just and proper.

I have given my thoughtful consideration to the contentions of the learned counsel for the parties. The petitioner has challenged the various proceedings arising out of FIR No.115 dated 11.5.2002 (Annexure-P.2) by way of Criminal Misc. No.12068-M of 2007 which is pending in this Court. The order dated 10.2.2003 (Annexure-P.3) whereby he has been declared a proclaimed offender has also been challenged. The petitioner has expressed his sincere desire to participate in the trial and seek quashing of the FIR in accordance with law.

In the afore-noticed circumstances the furnishing of bank guarantee would entail that the petitioner has to deposit a sum of Rs.10 Lacs so as to get bank guarantee for the said amount. The condition as such imposed in the facts and circumstances of the present case is unduly harsh. The ends of justice would be met if the petitioner instead of furnishing bank guarantee for a sum of Rs.10 Lacs furnishes security to the satisfaction of the Sub Divisional Judicial Magistrate Nawanshahr for securing his presence in terms of the order dated 3.4.2007 (Annexure-P.12).

Accordingly, the criminal miscellaneous petition is disposed of by modifying condition (iii) of the order dated 3.4.2007 (Annexure-P.12) to the extent that instead of the petitioner furnishing bank guarantee in the sum of Rs.10 Lacs in the name of the Court from the bank he shall furnish personal bond and two sureties to the satisfaction of the learned Sub Divisional Judicial Magistrate, Nawanshahr.

The criminal miscellaneous petition stands disposed of accordingly.

May 3, 2007. **(S.S. Saron)**
Judge

hsp